

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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**EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,**

**Plaintiff,**

**v.**

**BRENTWOOD FIRE DISTRICT and the  
BRENTWOOD FIRE DEPARTMENT,**

**Defendants.**  
-----X

**CIV. NO. 09-3298 (DRH) (AKT)**

**CONSENT DECREE**

This action was filed on July 30, 2009 by Plaintiff United States Equal Employment Opportunity Commission ("EEOC"), an agency of the United States Government, alleging that Defendants Brentwood Fire District and Brentwood Fire Department ("Defendants") discriminated against John Belyea, Albert Gissi, Cecil Harrell, John Devaul, Richard Fetherston, Frederick Harris, John Kelske, George Leggio, Donald Leun, Arthur Murfitt, James Nordenhausen, George Prygoki, Sheldon Randler, Harold Roberts, Joseph Rodina, Joseph Rubino, Stephen Wilcox, Andrew Wittman, and Herbert Zier, and a class of similarly situated volunteer firefighters, age 62 and older, by not allowing them to accrue credit towards a length of service award because of their age, in violation of the Age Discrimination in Employment Act of 1967, as amended ("ADEA"). Defendants deny that they discriminated against any volunteer firefighter at any time during their service to the Defendants.

EEOC and Defendants (hereinafter "the parties") herein desire to resolve the matter without further litigation and adjudication. Any payment referred to herein is not an admission

of liability by Defendants. The EEOC and Defendants therefore do hereby stipulate and consent to the entry of this Consent Decree as final and binding between the EEOC, Defendants, and their successors or assigns. This Consent Decree resolves all matters related to Civil Action No. 09-3298, filed in the United States District Court for the Eastern District of New York.

In consideration of the mutual promises of each party to this Decree, the sufficiency of which is hereby acknowledged, the parties agree as follows, the Court finds appropriate, and it is therefore ORDERED, ADJUDGED AND DECREED that:

1. The parties agree and the Court finds that this Court has jurisdiction of the subject matter of this action and of the parties, that venue is proper, and that all administrative prerequisites have been met. This Decree is being issued with the consent of the parties. No party shall contest the validity of this Consent Decree, nor the jurisdiction of the Federal District Court to enforce this Consent Decree and its terms.

2. This Consent Decree is final and binding between the EEOC and Defendants, and resolves all claims in EEOC's Complaint in this case and the following underlying EEOC

Charges:

EEOC Charge No. 250-2007-03243 filed by John Belyea  
EEOC Charge No. 250-2007-03244 filed by John Belyea  
EEOC Charge No. 250-2007-03245 filed by Alfred Gissi  
EEOC Charge No. 250-2007-03246 filed by Alfred Gissi  
EEOC Charge No. 250-2007-03247 filed by Cecil Harrell  
EEOC Charge No. 250-2007-03248 filed by Cecil Harrell  
EEOC Charge No. 250-2007-03249 filed by John Devaul  
EEOC Charge No. 250-2007-03250 filed by John Devaul  
EEOC Charge No. 250-2007-03251 filed by John Devaul  
EEOC Charge No. 250-2007-03252 filed by John Devaul  
EEOC Charge No. 250-2007-03253 filed by Frederick Harris  
EEOC Charge No. 250-2007-03254 filed by Frederick Harris  
EEOC Charge No. 250-2007-03255 filed by John Kelske  
EEOC Charge No. 250-2007-03256 filed by John Kelske  
EEOC Charge No. 250-2007-03257 filed by George Leggio  
EEOC Charge No. 250-2007-03258 filed by George Leggio

EEOC Charge No. 250-2007-03259 filed by Donald Leun  
EEOC Charge No. 250-2007-03260 filed by Donald Leun  
EEOC Charge No. 250-2007-03261 filed by Arthur Murfitt  
EEOC Charge No. 250-2007-03262 filed by Arthur Murfitt  
EEOC Charge No. 250-2007-03263 filed by James Nordenhausen  
EEOC Charge No. 250-2007-03264 filed by James Nordenhausen  
EEOC Charge No. 250-2007-03265 filed by George Prygocki  
EEOC Charge No. 250-2007-03266 filed by George Prygocki  
EEOC Charge No. 250-2007-03267 filed by Sheldon Randler  
EEOC Charge No. 250-2007-03268 filed by Sheldon Randler  
EEOC Charge No. 250-2007-03288 filed by Harold Roberts  
EEOC Charge No. 250-2007-03289 filed by Harold Roberts  
EEOC Charge No. 250-2007-03290 filed by Joseph Rosina  
EEOC Charge No. 250-2007-03291 filed by Joseph Rosina  
EEOC Charge No. 250-2007-03292 filed by Joseph Rubino  
EEOC Charge No. 250-2007-03293 filed by Joseph Rubino  
EEOC Charge No. 250-2007-03294 filed by Stephen Wilcox  
EEOC Charge No. 250-2007-03295 filed by Stephen Wilcox  
EEOC Charge No. 250-2007-03296 filed by Andrew Wittman, Jr.  
EEOC Charge No. 250-2007-03297 filed by Andrew Wittman, Jr.  
EEOC Charge No. 250-2007-03301 filed by Herbert Zier  
EEOC Charge No. 250-2007-03305 filed by Herbert Zier

3. This Consent Decree in no way affects EEOC's right to process any pending or future charges that may be filed against Defendants, and to commence civil actions on any such charges.

#### **BACKGROUND**

4. Under New York State law, local communities can establish Length of Service Award Programs for volunteer firefighters in which firefighters who earn 50 "points" obtain a year of "creditable service" toward a "length of service award."

5. In 1989 Defendant Brentwood Fire District created a Length of Service Award Program for the Brentwood Fire Department (the "Brentwood LOSAP"). Under the terms of the Brentwood LOSAP, firefighters had to accrue five (5) years of creditable service to become eligible to receive a length of service award. Under the terms of the Brentwood LOSAP, volunteer firefighters age 62 and older could not earn firefighting service, because of their age.

6. Effective January 1, 2005, Defendants amended the Brentwood LOSAP to permit volunteer firefighters to earn additional years of firefighting service regardless of their age. This amendment took effect for the 2005 calendar year, and applied only in subsequent years.

#### **MONETARY RELIEF**

7. The firefighters who are entitled to damages are those members of the Brentwood Fire Department at any time between January 1, 1990 and the present who, but for the age limitation in effect during 1990 to 2004, inclusive, would have received one (1) or more years of additional firefighting service (the "Claimant Class"). The Claimant Class is set forth in Exhibit A, which also shows the years that the firefighters would have earned firefighting service except for the age limitation, the total number of years of firefighting service not awarded due to the age limitation, and the settlement amounts to be paid each firefighter.

8. Each firefighter in the Claimant Class, including deceased firefighters, who receive this additional firefighting service credit is entitled to a lump-sum retroactive payment of the difference between the length of service award previously received and the length of service award the firefighter should have received had the additional firefighting service been included in calculating the service award. All living members of the Claimant Class who receive this additional service will also prospectively receive an increased length of service award based on all years of firefighting service.

9. Within fourteen (14) days after the entry of this Consent Decree, Defendants will credit each firefighter identified in Exhibit A with the years of firefighting service set forth in Exhibit A and recalculate the length of service award of each such firefighter based on inclusion of the additional firefighting service.

10. Within thirty (30) days after the entry of this Consent Decree, Defendants will pay the settlement amounts shown in Exhibit A, which reflect a total of \$465,600.00 (Four Hundred Sixty-Five Thousand and Six Hundred Dollars and No Cents) in retroactive benefits due the claimants through February 28, 2011.<sup>11</sup> The payments will be made by checks made payable to each claimant. For each check, Defendants will issue an IRS form 1099 and make appropriate tax withholdings. Copies of the checks and 1099 forms will be forwarded to Adela Santos, by email to [adela.santos@eeoc.gov](mailto:adela.santos@eeoc.gov) or by facsimile to 212-336-3623, contemporaneously with the issuance of each check.

11. Starting on April 1, 2011 Defendants shall provide increased monthly payment amounts to each member of the Claimant Class identified in Exhibit A who is still living, consistent with the revised entitlement years indicated in Exhibit A and the recalculated length of service awards made pursuant to paragraph 9.

12. The estates of the deceased members of the Claimant Class who receive additional service credit pursuant to this Consent Decree will receive one lump sum payment.

13. The amounts set forth in Exhibit A of this Consent Decree were arrived at through good faith negotiations between the parties in an effort to resolve this lawsuit. Nothing in this Consent Decree is intended to and the Consent Decree in no way expands or otherwise affects the provisions of the Brentwood LOSAP.

#### **ADDITIONAL RELIEF**

14. Defendants are permanently enjoined from preventing active volunteer firefighters from receiving service award credit in the Brentwood LOSAP because of their age.

15. Defendants and their managers, officers, agents, successors and assigns are enjoined from retaliating against John Belyea, Albert Gissi, Cecil Harrell, John Devaul, Richard Fetherston, Frederick Harris, John Kelske, George Leggio, Donald Leun, Arthur Murfitt, James Nordenhausen, George Prygoki, Sheldon Randler, Harold Roberts, Joseph Rodina, Joseph Rubino, Stephen Wilcox, Andrew Wittman, Herbert Zier, and/or any other individual for asserting his or her rights under the ADEA, or for participating in this matter or assisting the EEOC in any way.

16. No later than ten (10) days after the entry of this Consent Decree, Defendants shall post, at their respective offices, departments, and/or stations, a copy of a notice in the form attached hereto as Exhibit B, which shall remain posted for the length of this Consent Decree.

17. No later than ten (10) days after the entry of this Consent Decree, Defendants shall post, at their respective offices, departments, and/or fire stations, the "Equal Employment is the Law" poster available to order through EEOC's public webpage at [www.eeoc.gov](http://www.eeoc.gov).

18. Defendants have adopted anti-discrimination policies and complaint procedures for firefighters of Brentwood's Fire Department and Brentwood's Fire District that address all statutes enforced by the EEOC. A copy is attached hereto as Exhibit C.

19. No later than sixty (60) days after the entry of this Consent Decree, all of Defendants' Commissioners, Trustees, and Officers shall attend at least one and a half hours of training in the first and third calendar year of the term of this Decree on the requirements of the ADEA, including as applied to retirement benefit programs. The training will be conducted by Jeffrey Naness of Naness, Chalet & Naness, LLC.

20. With the exception of Paragraphs 14, which is a permanent injunction, this Consent Decree shall continue in force and effect for a period of three (3) years from its entry.

During this time, even if the case is closed administratively, this Court shall continue to retain jurisdiction over this matter and the parties for purposes of enforcing the Consent Decree.

21. Each of the parties to this Consent Decree shall bear its respective costs and attorneys' fees in this matter.

Dated: 3/3/11

FOR PLAINTIFF EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION




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FOR DEFENDANTS BRENTWOOD FIRE  
DISTRICT AND BRENTWOOD FIRE  
DEPARTMENT

Dated: 3/1/11



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ENTERED AND ORDERED this 14 day of March 2011.

*[Signature]*  
HONORABLE DENNIS R. HURLEY  
UNITED STATES DISTRICT JUDGE

**Judgment Entered.**

**ROBERT C. HEINEMANN**

**Robert C. Heinemann, Clerk**  
**USDC/EDNY DATE MAR 15 2011**

By: /s/ Catherine Vukovich  
Deputy Clerk